BANKRUPTCY, 3 ed., 197. Consequently, the interpretation of the section relating to the knowledge required to make the discharge operative does not depend, as the court in the principal case intimated, upon any question of the taking of property without due process of law. Courts have been liberal in their treatment of the knowledge sufficient to bar the claim. Neither need it be equivalent to the notice required by § 58 *a* of the Bankruptcy Act, nor is the source of the knowledge material, for knowledge gained through the reading of a newspaper or through conversation with the bankrupt has been held sufficient. *Morrison* v. *Vaughan*, 104 N. Y. Supp. 169; *Jones* v. *Walter*, 115 Ky. 560; *Kaufman* v. *Schreier*, 108 N. Y. App. Div. 298. It is well for the court to require knowledge upon which the creditor can reasonably rely. And the knowledge should be obtained in time to give the creditor opportunity to avail himself of the rights and privileges accorded to other creditors under the statute. *Birkett* v. *Columbia Bank*, 195 U. S. 345, 350. In the principal case the facts seem sufficient to have filled such requirements so as to bar the claim.

BURDEN OF PROOF — WHETHER A MATTER OF PROCEDURE OR SUBSTANTIVE LAW — STATUTORY SHIFT OF THE BURDEN AS TO CONTRIBUTORY NEGLIGENCE. — In a suit for the negligent killing of plaintiff's intestate, brought under the Federal Employers' Liability Act, the defendant contended that, under the Conformity Act, the state rule of procedure should be followed, thereby placing on the plaintiff the burden of proving that the intestate was not contributorily negligent. The court refused so to charge. *Held*, that the charge was properly refused. *Central Vermont Ry.* v. *White*, 238 U. S. 507.

In a suit for the negligent killing of the plaintiff's intestate the defendant contended that since the death of the intestate occurred before the enactment of the Code of Civil Procedure which placed the burden of proving the plaintiff's contributory negligence on the defendant, the new provision would not apply, although in force at the time of the trial. The trial court so ruled. *Held*, that the ruling was error. *Sackheim* v. *Piqueron*, 109 N. E. 109 (N. Y.)

See p. 95 in this issue of the REVIEW for a discussion of the principle involved in these cases.

CONFLICT OF LAWS — EXTENT OF GOVERNMENTAL POWER — LAW GOVERNING THE INTERPRETATION OF THE BY-LAWS OF A FOREIGN CORPORATION. — The plaintiff took out a policy of insurance in a Massachusetts beneficiary corporation, through a branch lodge in New York. He agreed to be bound by the by-laws as then in force or as changed. The by-laws were changed and this change upheld as valid by the Massachusetts Supreme Court. He now brings action on the policy in New York. *Held*, that the validity of the change must be governed by the Massachusetts decision. *Supreme Council of Royal Arcanum* v. *Green*, 35 Sup. Ct. Rep. 724.

The determination of the powers of a foreign corporation and the interpretation of its rules are controlled by the law of the domicile of the corporation. *Gaines* v. *Supreme Council of the Royal Arcanum*, 140 Fed. 978; *Larkin* v. *Knights of Columbus*, 188 Mass. 22, 73 N. E. 850; *Warner* v. *Delbridge Co.*, 110 Mich. 590, 68 N. W. 283. In accord with this principle, the nature and the extent of the shareholder's liability for the debts of the corporation are governed by the law of the incorporating state. *Selig* v. *Hamilton*, 234 U. S. 652; *Converse* v. *Hamilton*, 224 U. S. 243; *Howarth* v. *Lombard*, 175 Mass. 570, 56 N. E. 888. See 23 HARV. L. REV. 37. Again, liens may be declared on stock by valid regulations of the incorporating sovereign. *Hudson River Pulp & Paper Co.* v. *Warner & Co.*, 99 Fed. 187; *Warner* v. *Delbridge Co.*, *supra*. It has even been held that contracts made with a foreign corporation are subject to the legislation of the foreign government affecting that corporation's

obligations and powers. *Canada Southern Ry. Co.* v. *Gebhard*, 109 U. S. 527. See 28 HARV. L. REV. 797. It follows that the validity of changes in the by-laws of the corporation should be governed by the laws of the state which incorporated it.

CONSIDERATION — WHAT CONSTITUTES CONSIDERATION — CONSIDERATION MOVING TO PROMISOR FROM THIRD PERSON. — The plaintiff, a manufacturer, sold goods to a jobber who agreed not to resell below fixed prices and to obtain similar price-maintenance agreements from those to whom he sold. The jobber obtained such an agreement from the defendant and gave the consideration therefor. The plaintiff now brings an action for breach of this agreement. For the purposes of the decision the House of Lords assumed that the promise ran direct to the plaintiff, as undisclosed principal, but that he gave no consideration for it. *Held*, that the plaintiff may not recover. *Dunlop Pneumatic Tyre Co.* v. *Selfridge & Co.*, [1915] A. C. 847.

From an early date English courts have consistently refused a right of action to the beneficiary in either the debtor-creditor or sole beneficiary type of contracts for the benefit of a third party. *Bourne* v. *Mason*, 1 Vent. 6; *Tweddle* v. *Atkinson*, 1 B. & S. 393. In these cases the real difficulty with the plaintiff's position is that no promise was made to him. See 22 HARV. L. REV. 223. However the courts almost invariably go on the ground that the plaintiff is a stranger to the consideration. This view is due to the influence of the history of the action of assumpsit, as it originated in an action of deceit in which the plaintiff recovered damages for the defendant's having caused him to part with value on a false promise. To-day the cause of action no longer consists in a tort but in the breach of a promise for which the defendant received consideration. Under this view there is no difficulty in letting a plaintiff sue on a promise made to him for which a third party furnished the consideration. *Hamilton* v. *Hamilton*, 127 N. Y. App. Div. 871, 112 N. Y. Supp. 10. See 25 HARV. L. REV. 187. This result is generally reached in America even in jurisdictions rejecting *Lawrence* v. *Fox*. *Palmer Savings Bank* v. *Insurance Co. of North America*, 166 Mass. 189, 44 N. E. 211. The same course would be open to English courts did they not fail to distinguish a plaintiff who is a true promisee though he gave no consideration, from the plaintiff who is a stranger to both consideration and promise. The decision of the House of Lords in the principal case has definitely closed the door upon this distinction in England.

CONSTITUTIONAL LAW — TRIAL BY JURY — CHANGE OF JUDGES DURING TRIAL — WAIVER OF USUAL PROCEDURE. — The defendant, Freeman, was indicted with others for conspiring to defraud by the use of the United States mails. After the trial had proceeded for eight weeks, Judge Hough, who was presiding, became critically ill, and by the consent of all parties, Judge Mayer took his place for the remainder of the trial, familiarizing himself with the proceedings by reading the record. The defendant was convicted, and appealed, on the ground that the change of judges was a violation of his constitutional rights. *Held*, that the judgment must be reversed. *Freeman* v. *United States* (not yet reported).

For a discussion of the principles, see NOTES, p. 83.

CONTRIBUTORY NEGLIGENCE — IMPUTED NEGLIGENCE — NEGLIGENCE OF HUSBAND IN CHARGE OF CHILD IMPUTED TO WIFE IN RECOVERY UNDER DEATH STATUTE. — The child of the plaintiff was killed by the concurrent negligence of the defendant and the plaintiff's husband, who had charge of the child, and was killed at the same time. The plaintiff now sues for the death of her child under a death statute giving a direct right of action to parents. *Held*, that the marital relation imputes the negligence of the hus-